

**Office of Chief Counsel  
Internal Revenue Service**

**memorandum**

CC:LM:NR:DEN:POSTF-139558-02  
WRDavis

date: August 2, 2002

to: Team Manager, LMSB-CTM, Group [REDACTED]  
Attn: [REDACTED]

from: Area Counsel  
(Natural Resources:Houston)

---

subject: Request for LMSB Division Counsel Assistance:  
[REDACTED] Corporation and Subsidiaries (EIN: [REDACTED]) - Consent to  
Extend Statute of Limitations for Taxable Year Ended Dec. 31, [REDACTED]  
Address: [REDACTED] Corp., [REDACTED],  
[REDACTED]

This memorandum responds to your request for assistance seeking our opinion as to the proper parties and language to include on a consent to extend the statute of limitations on assessment for [REDACTED] Corporation and Subsidiaries ("taxpayer"), for the taxable year ended December 31, [REDACTED]. This memorandum should not be cited as precedent.

Please note that, as nondocketed significant advice, this memorandum is subject to a 10-day post-review by Chief Counsel National Office. Once this review has been completed, we will contact you to advise of its acceptance upon review, or of any modifications to the proposed response.

**DISCLOSURE STATEMENT**

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

**ISSUE**

Who is the proper party to agree to, and what is the correct wording of a consent to extend the statute of limitations upon assessment of income tax for the taxpayer for its taxable year ended December 31, [REDACTED] ("taxable year at issue")?

### CONCLUSIONS

██████████ Corp., a Delaware corporation ("██████████ Corp."), can extend the statute of limitations for assessment and collection for the taxpayer's tax year at issue, as the agent for the consolidated group for which ██████████ Corporation ("██████████") was the common parent. The caption on page 1 of the Form 872<sup>1</sup> should read:

██████████ Corp. (EIN: ██████████), formerly ██████████ Corporation, as agent for the members of the ██████████ Corporation and Subsidiaries consolidated group.\*

Put an asterisk after "group." At the bottom of the Form 872, include the following language:

\* This is with respect to the consolidated federal income tax of the ██████████ Corporation (EIN: ██████████) and Subsidiaries consolidated group for the group's taxable year ended December 31, ██████████.

We further remind you that you must notify ██████████ Corp. of its right 1) to refuse to extend the period of limitations, or 2) to limit the extension to a particular issue, or 3) to limit the extension to a particular period of time. Further, it is suggested that you secure consents to extend statutes of limitation by sending Letter 907(DO). In addition, you should provide ██████████ Corp. with Publication 1035.

### FACTS

A consolidated corporate income tax return was filed for ██████████ Corporation and Subsidiaries, EIN: ██████████, for its taxable year ended December 31, ██████████. ██████████ was, at all times relevant, a Colorado corporation.

#### Pre-reorganization Relation of ██████████, Subsidiaries, and Affiliates

Prior to the ██████████, reorganization, described below, ██████████ was the common parent of an affiliated group of companies that filed consolidated returns. The consolidated group filed its returns on a calendar year basis. During the

---

<sup>1</sup> Use the corporate Form 872-I if ██████████ was a member of any TEFRA partnerships during the taxable year at issue.

year [REDACTED], [REDACTED] formed [REDACTED] Corporation<sup>2</sup> ("[REDACTED]") as a wholly-owned subsidiary of [REDACTED].

At that time, [REDACTED] L.L.C. ("[REDACTED]") was [REDACTED]'s principal stockholder, owning approximately [REDACTED]% of all outstanding [REDACTED] stock. The Agreement further stated that [REDACTED] Company, L.L.C., formerly known as [REDACTED], L.L.C., ("[REDACTED]") was an affiliate of [REDACTED]. It is our understanding that [REDACTED] was the sole owner of [REDACTED] stock prior to the reorganization. Notes to the consolidated financial statements of [REDACTED] Corp. and Subsidiaries filed in [REDACTED], indicates that common control of [REDACTED] and [REDACTED] was established on [REDACTED].

On [REDACTED], [REDACTED]; [REDACTED]; [REDACTED] Corporation ("[REDACTED]")<sup>3</sup>; and [REDACTED] entered into an Amended and Restated Merger Agreement. This agreement provided for, among other things, the merger of two wholly-owned subsidiaries of [REDACTED] with and into [REDACTED] and [REDACTED], respectively. Specifically, [REDACTED] formed a wholly-owned subsidiary named [REDACTED] Corp. ("[REDACTED] Sub"). Concurrent with the formation of [REDACTED] Sub, [REDACTED] formed a wholly-owned subsidiary named [REDACTED] Corp. ("[REDACTED] Sub").

#### Merger Agreement

On or about [REDACTED], [REDACTED] Sub merged with and into [REDACTED], with [REDACTED] surviving the merger. Thereafter, [REDACTED] changed its name to [REDACTED] Corporation, and formed a wholly-owned subsidiary named [REDACTED] Corp., under the laws of the State of Delaware. Once formed, [REDACTED] Corporation, a Colorado corporation, merged with and into [REDACTED] Corp., a Delaware corporation, with the Delaware corporation surviving the merger. This Merger Agreement sets forth the sole purpose for this step as the changing of [REDACTED]'s jurisdiction of incorporation from Colorado to Delaware. [REDACTED] Corp. has the same EIN as [REDACTED]: [REDACTED]. A resolution of the Board of Directors for [REDACTED] Corp. names that corporation's officers, and authorizes them to, among other things, execute agreements for and on behalf of the corporation.

---

<sup>2</sup> [REDACTED] was formed on [REDACTED], under the name [REDACTED] Corporation. On [REDACTED], [REDACTED] Corporation changed its name to [REDACTED] Corporation. On [REDACTED], [REDACTED] Corporation changed its name to [REDACTED] Corporation. [REDACTED] and each of its predecessors were Delaware corporations.

<sup>3</sup> [REDACTED] was wholly-owned by [REDACTED].

Concurrent with [REDACTED] Sub's merger with and into [REDACTED], [REDACTED] Sub merged with and into [REDACTED], with [REDACTED] surviving the merger. Thereafter, as a result of these actions, [REDACTED] and [REDACTED] became wholly-owned subsidiaries of [REDACTED]. Based upon the Amended and Restated Merger Agreement's exchange ratios, [REDACTED], the owner of [REDACTED] prior to the reorganization, received approximately [REDACTED]% of [REDACTED]'s outstanding capital stock, while [REDACTED]'s former stockholders received approximately [REDACTED]% of [REDACTED]'s outstanding capital stock. The notes to [REDACTED]'s consolidated financial statements indicate that [REDACTED] and its affiliates owned approximately [REDACTED]% of the outstanding capital stock of [REDACTED] as of [REDACTED].

#### Current Statute Expiration

It is our understanding that the statute of limitations for [REDACTED]'s [REDACTED] tax year is currently open until [REDACTED], which date is three years after the filing of its return for that year. **If the facts are materially different, please contact us immediately.**

#### ANALYSIS

Where a corporate taxpayer stands as the common parent of an affiliated group of corporations, as defined by I.R.C. § 1504(a), it and the members of the affiliated group may, under certain circumstances, elect to file a consolidated return under section 1501 et seq.

Guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment for a consolidated group is found in the consolidated return regulations. Treas. Reg. § 1.1502-1 et seq. Therein, Treas. Reg. § 1.1502-77(a) describes the scope of a common parent corporation's agency. That regulation makes clear that, with the exception of the members' consent to file a consolidated return, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a).

The common parent in its name will give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the consolidated

return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. § 1.1502-77(a); Southern Pacific Corp. v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence. Craigie Inc. v. Commissioner, 84 T.C. 466 (1985).

The transactions wherein [REDACTED] first changed its name to [REDACTED] Corporation, and subsequently merged into a wholly-owned subsidiary-[REDACTED] Corp.--so as to change its place of organization from Colorado to Delaware, represented a mere change in identity and therefore constituted a tax-free reorganization under section 368(a)(1)(F). Treas. Reg. § 1.1502-75(d)(2)(i) specifically holds that "the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation (see section 368(a)(1)(F))." Under these facts, the mere change in identity effected by the name change of [REDACTED] to [REDACTED] Corporation, and by the merger of [REDACTED] Corporation into [REDACTED] Corp., did not change this corporation's position as the common parent of [REDACTED] Corporation and Subsidiaries that filed a consolidated return for [REDACTED].

In accordance with the above, any current officer of [REDACTED] Corp. of the type set forth in section 6062 may sign the consent to extend the statute of limitations on assessment for the [REDACTED] consolidated group for the Form 1120 for the years at issue.

We recommend that you submit the consents to either [REDACTED], the authorized officers of [REDACTED] Corp., identifying the taxpayer on the Form 872 as follows:

[REDACTED] Corp. (EIN: [REDACTED]), formerly [REDACTED] Corporation, as agent for the members of the [REDACTED] Corporation and Subsidiaries consolidated group.\*

Put an asterisk after "group." At the bottom of the Form 872, include the following language:

\* This is with respect to the consolidated federal income tax of the [REDACTED] Corporation (EIN: [REDACTED]) and Subsidiaries consolidated group for the group's taxable year ended December 31, [REDACTED].

We further remind you that you must notify the taxpayer (in this case, [REDACTED] Corp.) of its right 1) to refuse to extend the period of limitations, or 2) to limit the extension to a particular issue, or 3) to limit the extension to a particular period of time.

IRM 25.6.22.3 sets forth the notification procedures that the Service must follow on each occasion when the taxpayer is requested to extend the statute by consent. This provision requires that the notification must be made to the taxpayer by sending or presenting Letter 907(DO), and sending or presenting Publication 1035. See IRM 25.6.22.3(2). Further, it is suggested that you secure consents to extend statutes of limitation by sending Letter 907(DO). In addition, you should provide a copy of Publication 1035.

Please do not hesitate to contact the undersigned if you need further assistance concerning this matter, at (303) 844-2214, ext. [REDACTED].

BERNARD B. NELSON.  
Area Counsel  
(Natural Resources:Houston)

By: \_\_\_\_\_  
WILLIAM R. DAVIS, JR.  
Attorney (LMSB)